

APPEAL NO. 032978
FILED DECEMBER 23, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 22, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that the respondent (carrier) is relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001; and that the claimant did not have disability. The claimant appealed, asserting evidentiary error, and on sufficiency of the evidence grounds. The carrier responded, urging affirmance.

DECISION

Affirmed.

The claimant asserts that the hearing officer erred in admitting the carrier's exhibits over his objection. At the hearing, it was the claimant's position that the carrier sent its document exchange to his old address. The carrier responded that it sent the documents to the address listed on the Benefit Review Conference (BRC) Report, and that the exchange was returned as undeliverable. The claimant conceded that he moved after the BRC, and that he did not notify the Texas Workers' Compensation Commission or the carrier of his new address. Under these facts, we cannot say that the hearing officer erred in admitting the carrier's exhibits. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.4(a) (Rule 102.4(a)).

The claimant had the burden to prove that he sustained a compensable injury as defined by Section 401.011(10). Conflicting evidence was presented on that issue. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer found that the claimant failed to prove that he sustained an injury in the course and scope of his employment on _____. The hearing officer's determination that the claimant did not sustain a compensable injury is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Thus, no sound basis exists for us to disturb the injury determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that he did not have disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

Section 409.001 requires that an employee notify the employer of an injury by the 30th day after the injury occurs. Failure to do so, absent a showing of good cause or actual knowledge of the injury by the employer, relieves the carrier of liability for the

payment of benefits for the injury. Section 409.002. Whether, and, if so, when, notice is given is a question of fact for the hearing officer to determine. Conflicting evidence was presented on this issue. The hearing officer determined that the claimant did not provide timely notice of any injury to the employer and that no good cause for the failure to do so was shown. Those findings are supported by the evidence and are not so contrary to the great weight and preponderance of the evidence as to compel their reversal on appeal. Cain, *supra*.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge